

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Jennifer Florida,)
Plaintiff,)
v.) No. 4:14-cv-1840
Board of Election Commissioners for the City)
of St. Louis, Missouri,)
Defendant.)

VERIFIED COMPLAINT

Introduction

1. In this civil rights action, pursuant to 42 U.S.C. § 1983, Plaintiff Jennifer Florida seeks an order enjoining the Board of Election Commissioners for the City of St. Louis from enforcing its policies and customs prohibiting the distribution by Florida, or others on her behalf, of a sample ballot indicating that she is an Independent Democrat and directing that any literature in violation shall be seized by the Board.
2. These policies and customss violate the First Amendment in that they are a content-based, prior restraint on protected expression, but are not narrowly tailored to meet a compelling government interest. Moreover, they violate the Due Process Clause of the Fourteenth Amendment in that they are arbitrary and permit the seizure of literature without due process.

Jurisdiction and Venue

3. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983.
4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in the City of St. Louis, Missouri.
6. Venue is proper in the Eastern Division pursuant to local rule.

Parties

7. Plaintiff, Jennifer Florida, is a resident of the City of St. Louis, Missouri. She is the Recorder of Deeds for the City of St. Louis; however, she brings this suit in her individual capacity. She is a candidate for Recorder of Deeds in the November 4, 2014, election.
8. Defendant, Board of Election Commissioners for the City of St. Louis, Missouri, is a governmental body authorized by Mo. Rev. Stat. § 115.017. Defendant has the authority to conduct elections, including the November 4, 2014, election for Recorder of Deeds.
See Mo. Rev. Stat. § 115.023.
9. Defendant's actions relevant to this Complaint are taken under color of state law.

Facts

10. Plaintiff is a life-long Democrat. She ascribes to and promotes the values of the Democratic Party. She has served for more than a decade as a Democratic elected official.
11. After a scandal required resignation of the Recorder of Deeds, the Mayor of St. Louis appointed Plaintiff to serve as her replacement.
12. Plaintiff is running to retain her position as the Recorder of Deeds.
13. Because the deadline to participate in the primary election had already passed before Plaintiff became Recorder of Deeds, she is running as an independent Democrat.

14. She will appear on the ballot as an independent; however, she views herself and has campaigned as an Independent Democrat. To this end, she and her campaign have expended funds producing literature that identifies her as an Independent Democrat. A example of one such piece of literature is attached hereto as Exhibit A. Attached as Exhibit B is an image of the campaign's yard signs, which identify Plaintiff as "The Independent Democrat."
15. The phrase "Independent Democrat" accurately describes Plaintiff.
16. Plaintiff is not intending to mislead anyone by describing herself as an "Independent Democrat."
17. Like other candidates for public office, Plaintiff has found that one effective way to communicate with voters is to distribute a "sample ballot" that suggests for whom the voter should cast a ballot.
18. Plaintiff plans to distribute such a sample ballot that, consistent with her campaign literature to date, indicates that she is an "Independent Democrat."
19. On or about October 27, 2014, Defendant adopted a written policy that "any sample ballot distributed by or on behalf of a candidate must clearly indicate whether that candidate is running as a party candidate or as an independent candidate only." Moreover, the policy dictates that "[a]ny sample ballot found to be in violation of this policy shall be seized by the St. Louis City Election Board." A copy of the policy is attached as Exhibit C.
20. Because the policy is signed "Hon. Joan M. Burger, Chair," it has the appearance of a court order.
21. Defendant has previously seized campaign literature it deemed to be misleading.

22. It is the custom or policy of Defendant to seize campaign literature that it deems misleading.
23. Because of the policy, Plaintiff has refrained from distributing, or allowing to be distributed on her behalf, campaign literature labeled “sample ballot” that indicates she is an “Independent Democrat.”
24. Because of the policy, Plaintiff fears that campaign literature identifying her as an “Independent Democrat” will be seized by Defendant.

COUNT I
Violation of First and Fourteenth Amendments
to the United States Constitution

25. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
26. The October 27, 2014, policy and the custom or policy of seizing campaign literature that Defendant deems misleading are content-based restrictions on political speech.
27. The October 27, 2014, policy and the custom or policy of seizing campaign literature that Defendant deems misleading are prior restraints on political speech.
28. The October 27, 2014, policy and the custom or policy of seizing campaign literature that Defendant deems misleading are not narrowly tailored to meet a compelling government interest.
29. Plaintiff violates no law by identifying herself as an “Independent Democrat.”

WHEREFORE, Plaintiff prays this Court:

- A. Enter judgment in favor of Plaintiff and against Defendant;
- B. Enjoin Defendant from enforcing its policy of October 27, 2014, or from seizing campaign literature that it deems misleading;

- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief as the Court deems just and proper.

COUNT II
***Violation of Due Process Clause of the Fourteenth Amendment
to the United States Constitution***

- 30. Plaintiff incorporates herein by reference the allegations made in each preceding paragraph as if each were set forth here verbatim.
- 31. Plaintiff is aware of no law that permits Defendant to prohibit her, or others on her behalf, from distributing campaign literature, including a "sample ballot," that identifies her as an "Independent Democrat."
- 32. Plaintiff is aware of no law that permits Defendant to seize campaign literature.
- 33. The October 27, 2014, policy and the custom or policy of seizing campaign literature that Defendant deems misleading are arbitrary.
- 34. The custom or policy of seizing campaign literature is a taking of property without due process.
- 35. The October 27, 2014, policy and the custom or policy of seizing campaign literature that Defendant deems misleading authorize and encourage arbitrary and discriminatory enforcement.

WHEREFORE, Plaintiff prays this Court:

- A. Enter judgment in favor of Plaintiff and against Defendant;
- B. Enjoin Defendant from enforcing its policy of October 27, 2014, and from seizing campaign literature that it deems misleading;

- C. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law; and
- D. Allow such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Anthony E. Rothert
ANTHONY E. ROTHERT, #44827MO
GRANT R. DOTY, #60788MO
ACLU of Missouri Foundation
454 Whittier Street
St. Louis, Missouri 63108
Phone: (314) 652-3114
Fax: (314) 652-3112
trothert@aclu-mo.org
gdoty@aclu-mo.org

GILLIAN R. WILCOX, #61278MO
ACLU of Missouri Foundation
3601 Main Street
Kansas City, Missouri 64111
Phone: (816) 470-9938
gwilcox@aclu-mo.org

ATTORNEYS FOR PLAINTIFF

Verification

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Jennifer Florida
Jennifer Florida